IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 8.12.2004

CORAM:

THE HONOURABLE MR.JUSTICE P.D.DINAKARAN
AND
THE HONOURABLE MR.JUSTICE F.M.IBRAHIM KALIFULLA

W.A.No.1251 of 1999

Srinivasa Talkies
rep. by its Licencees
Vandavasi
Tiruvannamalai District. .. Appellant (Petitioner)

Vs

1. The State of Tamilnadu
   rep. by Secretary to Government
   Home (Cinemas) Department
   Fort St.George, Chennai-9.

2. The Assistant Commissioner
   Commercial Taxes
   Tiruvannamalai.

3. The Entertainment Tax Officer
   Vandavasi
   Tiruvannamalai District. .. Respondents (Respondents)

PRAYER: Appeal under Clause 15 of the Letters Patent against the order of the learned Single Judge dated 23.3.1999 made in W.P.No.14389 of 1991.

For Appellant : Mr.Mohana Sundaram
for Mr.A.Jinasenan
For Respondents: Mr.T.Ayyasami
2 & 3 Spl. Government Pleader (Taxes)

JUDGMENT

(Judgment of this Court was delivered by P.D.DINAKARAN,J.)

The appeal is directed against the order dated 23.3.1999 made in W.P.No.14389 of 1991 dismissing the appellant's writ petition following an earlier decision of this Court in DEVI THEATRE & ANOTHER v. DEPUTY COMMERCIAL TAX OFFICER & OTHERS, 1994 (5) MTCR 183, as admitted by the learned counsel for the appellant and the respondents herein.

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2.1. Of course, an earnest attempt was made by Mr.Mohana Sundaram, learned counsel for the appellant stating that even though the point raised in the appeal was not argued before the learned Single Judge, it deserves consideration inasmuch as it goes to the root of the issue and raises a question of law challenging the assessment order passed against the appellant.

2.2. According to the learned counsel for the appellant, as per Condition '6' of the Form 'C' license issued under the T.N.Cinema Regulation Rules, 1957 (for brevity "the Rules"), prior to the amendment brought in by G.O.Ms.No.1016, Home (Cinemas), dated 23.4.1987, there is no necessity to get a prior approval of the licensing authority for decreasing the actual rates of admission to each class of accommodation. For this reason, we are inclined to hear the appeal.

3.1. In brief, it is not in dispute that the appellant had reduced the actual rates of admission to each class of accommodation without getting the approval of the licensing authority as contemplated under Rules 83[1A](a) and 83[1A](c) of the Rules, which read as follows:

> "Rule 83[1A(a)] - The licensing authority shall fix the actual rates of admission to each class of accommodation, provided in the auditorium after taking into account the proposals of the licensee, the amenities provided in the theatre, the prevailing rates of admission in similar theatres in similar localities within this jurisdiction and any other relevant factor.
> Rule 83[1A(c)] - The licensing authority, may, on application by the licensee, alter the rates of admission for any class of accommodation, if there has been any change in the amenities provided either in that class of accommodation or generally in the theatre or for any other valid reasons."

3.2. Condition 6 of Form 'C' license granted to the petitioner after the amendment brought in by G.O.Ms.No.1016, reads as follows:

> "Condition 6: The actual rates of payment for admission to the different classes in the licensed premises shall be as indicated below and these rates shall not be altered during currency of this license without an order in writing by the licensing authority permitting such alteration."
>
> (emphasis supplied)

3.3. G.O.Ms.No.1016, Home (Cinemas), dated 23.4.1987 brought an amendment to Condition 6 of the Form 'C' license, and the said amendment reads as follows:

"In the said rules, in Form 'C', in condition 6, for the word

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"increase", the word "alteration" shall be substituted."

3.4. Accordingly, prior to 23.4.1987, Condition 6 in Form 'C' license stood as follows:

> "Condition 6: The actual rates of payment for admission to the different classes in the licensed premises shall be as indicated below and these rates shall not be altered during currency of this license without an order in writing by the licensing authority permitting such increase."
>
> (emphasis supplied)

4. Highlighting the scope of the above amendment, Mr.Mohana Sundaram, learned counsel for the appellant submits that if the actual rates of payment for admission to the different classes in the licensed premises are proposed to be decreased, there was no necessity to get an order in writing from the licensing authority permitting such decrease, because only in the case of increasing the actual rates of payment for admission to the different classes in the licensed premises an order in writing from the licensing authority permitting such increase is required.

5. The submission of the learned counsel for the appellant in this regard is quite impressive, but, we are unable to appreciate the same in view of the settled proposition in law that a condition imposed in Form 'C' license will not supersede the statutory rules referred to above, namely Rules 83[1A(a)] and 83[1A(c)] of the Rules, which are in the statute book right from 18.5.1979.

6. Even though the learned counsel for the appellant relies on condition 6 of the Form 'C' license, referred supra, it cannot be ignored that the said Form 'C' license itself is subject to the provisions of the Tamilnadu Cinemas (Regulation) Act, 1955 and the Rules made thereunder. Merely because it is stated in the Form 'C' license that the license is subject to the conditions stated therein, no provision of the Tamilnadu Cinemas (Regulation) Act, 1955 and the Rules made thereunder could be violated. Therefore, the appellant, in our considered opinion, is not entitled to claim that there is no requirement for him to comply with Rules 83[1A(a)] and 83[1A(c)] of the Rules, referred to above, merely because of condition 6 of the Form 'C' license as it stood prior to the amendment brought by G.O.Ms.No. 1016, Home (Cinemas), dated 23.4.1987.

7. The words employed in Rule 83[1A(a)] of the Rules, viz., the licensing authority shall fix the actual rates of admission to each class of accommodation, provided in the auditorium after taking into account (i) the proposals of the licensee; (ii) the amenities provided in the theatre; (iii) the prevailing rates of admission in similar theatres in similar localities within this jurisdiction; and

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(iv) any other relevant factor, cannot be lightly disregarded.

8. Likewise, the words employed in Rule 83[1A(c)], viz., the licensing authority, may, on application by the licensee, alter the rates of admission for any class of accommodation, if there has been any change in the amenities provided either in that class of accommodation or generally in the theatre or for any other valid reasons, also equally cannot be ignored.

9. It is trite law that the court's jurisdiction to interpret a statute can be invoked when the same is ambiguous. It is well known that in a given case the court can iron out the fabric but it cannot change the texture of the fabric. It cannot enlarge the scope of legislation or intention when the language of the provision is plain and unambiguous. It cannot add or subtract words to a statute or read something into it which is not there. It cannot rewrite or recast legislation. It is also necessary to determine that there exists a presumption that the legislature has not used any superfluous words, vide Nasiruddin v. Sita Ram Agarwal,(2003) 2 SCC 577.

10. Hence, in our considered opinion, either a decrease or increase in the actual rates of admissions to each class of accommodation contemplates a prior approval of the licensing authority, but for which the entertainment tax as per the revised or modified gross collection capacity cannot be reduced compounding the same under Section 5B of the Tamilnadu Entertainments Tax Act, as rightly held by the third respondent in his proceedings dated 27.8.1987, which was confirmed by the second respondent in his proceedings dated 30.8.1991, observing that the unilateral reduction of rates by the licensee placing reliance on Condition 6 of the Form 'C' license as stood prior to the amendment made by G.O.Ms.No.1016, Home (Cinemas), dated 23.4.1987 is not valid, as the same is contrary to Rules 83[1A(a)] and 83[1A(c)] of the Rules for the settled proposition of law that statutory requirement contemplated under the Rules shall prevail over the conditions imposed in the license.

11. Concededly, without obtaining appropriate order from the licensing authority in the manner contemplated under Rules 83[1A(a)] and 83[1A(c)] of the Rules, the appellant reduced the actual rates of payment for admission to the different classes and submitted his returns opting Section 5B of the Tamilnadu Entertainments Tax Act, 1939. Therefore, we are satisfied that the consequent payment of entertainment tax by the appellant is opposed to the statutory provisions, viz., Rules 83[1A(a)] and 83[1A(c)] of the Rules, referred to above. The mere amendment relied upon by the learned counsel for the appellant to Condition 6 of the Form 'C' license, therefore, in our considered opinion, will not in any way improve the case of the appellant, as it must be borne in mind that the

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conditions imposed in the license granted subject to the provisions of the Rules could never be intended to override the specific provisions of the Rules, which are in turn subsidiary to the provisions of the Act. Therefore, condition 6 of Form 'C' license relied upon by the appellant could never be construed to override the specific provisions of the Rules, namely Rules 83[1A(a)] and 83 [1A(c)] of the Rules, inasmuch as if reconciliation between a section and rule made under Act is not possible, then the rule which is subordinate provision must give way, vide Maxwell: Interpretation of Statues, 11th Edition, and when a conflict between the Rule and the condition made under the Rule is brought to the notice, the condition which is in derogation from the Rule must give way, as its construction should be in consonance with the statutory rule.

12. Finding no merits, this writ appeal is dismissed. No costs.

sasi

Sd/
Asst.Registrar

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Sub Asst.Registrar

To

1. The Secretary to Government,
   State of Tamilnadu
   Home (Cinemas) Department
   Fort St.George, Chennai-9.

2. The Assistant Commissioner
   Commercial Taxes
   Tiruvannamalai.

3. The Entertainment Tax Officer
   Vandavasi
   Tiruvannamalai District.

+ 1 CC to Mr.A.Jenasenan, Advocate SR No.54067.

+ 1 CC to the Special Govt. Pleader, High Court, Madras, SR No.53898.

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